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To: Kentucky Health Insurers and Health Care Providers

Thursday, October 16, 2003 marks another significant milestone with the implementation of the Health Insurance Portability and Accountability Act (HIPAA). October 16, 2003 is the deadline established for compliance with respect to the Transaction and Code Set (TCS) standards under the Administrative Simplification provisions of this federal law. As a covered entity or other entity affected by this requirement, you should be prepared for the transition to HIPAA compliant formats.

The purpose of this correspondence is to advise you of the need to work collaboratively during this important transition. Working together to address implementation problems is critical to a smooth transition which will assure that Kentucky citizens do not suffer reduced access to needed healthcare, that providers are not subjected to financial hardships and that insurers are not inappropriately criticized or penalized.

Since the passage of our prompt pay law and the promulgation of associated regulations, the Department has been monitoring the payment practices of insurers subject to Kentucky's prompt pay laws. Given the millions of claims and transactions involved, insurers, for the most part, have been compliant in meeting Kentucky's standards for timely pay. The Department continues to investigate non-compliant insurers and to take appropriate enforcement action when justified. The ability to submit, receive and pay claims electronically has been a substantial factor contributing to an improving record of timely payment.

While the Department is not responsible for the enforcement of the HIPAA TCS standards, the Department is obligated to enforce Kentucky's prompt pay laws. A key issue in this enforcement responsibility involves the determination of whether or not a claim is a "clean claim". After October 16th, in order for an electronic claim to be considered a "clean claim", it must be submitted in a HIPAA compliant format. If it is, and if the other requirements for a "clean claim" have been met, an insurer must adjudicate the claim within the appropriate time frame. The determination of whether or not a specific electronic claim is HIPAA compliant is an extremely complex task.

There is substantial concern on the part of many national organizations and on the part of the Centers for Medicare and Medicaid Services (CMS), that those involved in the submission and payment of claims will not be ready to transition into HIPAA compliant electronic formats



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by October 16th. The Department shares this concern. If providers are not ready to submit a HIPAA compliant claim, they will not be able to electronically submit a "clean claim" as defined by Kentucky law. If insurers are not ready to accept HIPAA compliant claims, payments will, no doubt, be delayed. Recently, the Department undertook to survey Kentucky insurers to determine their readiness. According to the survey responses, it appears that most Kentucky insurers are ready to accept the new transactions and code sets.

The Secretary for the Department of Health and Human Services has made CMS responsible for enforcing the TCS provisions of HIPAA. Recent guidance from CMS indicates that they will focus on obtaining voluntary compliance and use a complaint-driven approach for enforcement of these federal requirements. (See <http://www.cms.gov/hipaa/hipaa2/default.asp> for the details of this CMS guidance). In this guidance document, CMS recognizes that transactions often require the participation of two covered entities and that noncompliance by one covered entity may put the second covered entity in a difficult position. Accordingly, in the investigation of complaints received by CMS during the period immediately following the compliance date, CMS intends to look at both covered entities' good faith efforts to come into compliance with the standards.

To allow for a period of transition and based on CMS guidance, some insurers have adopted contingency plans which will allow the receipt of non-compliant electronic claims for a transitional period of time. In fact, Medicare and Kentucky Medicaid have instituted a contingency plan that will allow acceptance of both compliant and non-compliant claims. (See <http://www.medicare.gov> and <http://chs.ky.gov> for details). If you, as a provider, do not know whether a particular insurer has also adopted a contingency plan then you are encouraged to contact the insurer and inquire. Insurers are not required to adopt contingency plans and those that do will gradually phase them out. In announcing its contingency plan for Medicare, CMS stated that the contingency plan permits CMS to continue to accept and process claims in the electronic formats now in use, giving providers additional time to complete the testing process. CMS will regularly reassess the readiness of its trading partners to determine how long the Medicare contingency plan will remain in effect. Clearly, these contingency plans must be phased out to comply with the intent of Congress in adopting the Administrative Simplification provisions of HIPAA.

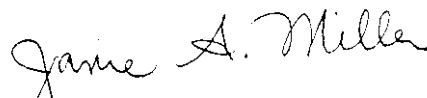
The Department's enforcement role is distinct from that of CMS. The Department's responsibility is to enforce Kentucky's prompt pay laws. The Department will continue to accept complaints by providers that insurers have failed to pay "clean claims" in a timely manner. On and after October 16th, a "clean claim" by Kentucky statute is defined as a HIPAA compliant claim, and while Medicare, Medicaid and many major insurers will accept both HIPAA formats and current electronic formats, only the HIPAA formats will qualify for an action regarding prompt pay violations after the implementation date. Because of this circumstance and since contingency plans must be phased out, it is imperative that providers and clearing houses continue to test with insurers and to make every effort to move their health care billings to the new HIPAA formats.

CMS has indicated, and the Department agrees, that the solution to these problems can best be accomplished by communication and cooperation on the part of the entities involved.

In conclusion, the Department is well aware of the time, money and effort that insurers and providers have expended in recent years to comply with the Administrative Simplification provisions of HIPAA: first with the privacy requirements, now with transactions and code sets and soon with security. The Department has been directly involved in HIPAA compliance through its operation of the Kentucky Access program which is a covered entity under HIPAA. The Department participates regularly in roundtable discussions sponsored by CMS on a national and regional basis. We have heard the difficult questions that are being asked by providers, insurers and other Commissioners of Insurance throughout the country. The Department fully understands that, at times, especially as HIPAA deadlines approach, Administrative Simplification may seem more like administrative complication.

While problems and complications are sure to occur in the transition to HIPAA compliant transactions, the Department is confident that, ultimately, these changes will benefit all covered entities and especially the citizens of the Commonwealth. The Department stands ready to enforce Kentucky's laws as appropriate through the complaint process. The Department also stands ready to facilitate the cooperative efforts between insurers and providers to bring about a smooth transition.

Sincerely,

A handwritten signature in cursive script that reads "Janie A. Miller".

Janie A. Miller
Commissioner

JAM/WJN